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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,318	10/14/2003	Xinggao Fang	5682A	5027

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EXAMINER

MATZEK, MATTHEW D

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 02/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/685,318	<b>Applicant(s)</b> FANG ET AL.	
	<b>Examiner</b> Matthew D. Matzek	<b>Art Unit</b> 1771	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 December 2005.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8, 10-12, 14-16, 18-23, 25-32 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 12, 14-16, 18-23, 25-32 and 35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10 and 11 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Response to Amendment***

1. The Amendment dated 12/19/2005 has been fully considered and entered into the Record. The amended claims contain no new matter. Claims 9, 13, 17, 24, 33 and 34 are canceled. Claims 1-8, 10-12, 14-16, 18-23, 25-32 and 35 are currently pending. Claims 12, 14-16, 18-23, 25-32 and 35 are withdrawn from prosecution. Claims 1-8, 10 and 11 are currently active.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-3, 5-8, and 11 rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock et al. (US 6,251,210).

a. Bullock et al. disclose a treated textile fabric comprising two chemical treatments with the primary treatment comprising at least about 5 weight percent of a fluorochemical and the secondary comprising the same composition as the primary except the fluorochemical comprises at least about 4 weight percent of the composition (Abstract). The Examiner takes the position that less than about 4 weight percent (Applicant) and at least about 4 weight percent (Bullock et al.) both extend beyond the value of 4 percent: 4.1 % for Applicant and 3.9% for Bullock et al. Therefore, the applied art anticipates the instantly claimed fluorochemical level. The primary treatment may also contain one or more antimicrobial agents, fluoropolymers, and cross-linked resins (col. 4, lines 42-44, col. 12, lines 7-31). The fluorochemicals provide water repellance and stain resistance (col. 12, lines 9-14). The applied patent teaches that the preferred latex component of the primary fluorochemical treatment may comprise acrylate copolymers and terpolymers of

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methacrylate (col. 11, lines 17-49). The applied article teaches the use of unblocked poly-isocyanate (col. 1, lines 44-66).

b. Claims 5 and 6 are rejected as the applied patent discloses that the anti-microbial agent may be “any substance or combination of substances that kills or prevents the growth of a microorganism and includes antibiotics, antifungal, antiviral, and antialgal agents, which includes triclosan and ZINC OMADINE<sup>TM</sup> (col. 11, lines 50-59). Zinc pyrithione is the generic name for ZINC OMADINE<sup>TM</sup>.

c. Preferred crosslinking resins and the associated crosslinkers of the applied patent are disclosed (col. 12, lines 25-41).

d. Claim 11 is rejected as the secondary coating is to be applied to only one side of the fabric (Abstract).

e. The applied patent is silent as the hydrophobicity of the disclosed crosslinking components, however as the applied invention discloses the instantly claimed crosslinking agent (derivative of an isocyanate) and the article is directed for use as a stain and water repellant textile fabric it is reasonable to presume that the crosslinking agents taught by Bullock et al. are hydrophobic.

3. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bullock et al. as applied above to claim 8 and further in view of Fitzgerald et al. (US 6,451,717 B1) as substantially set forth in the Office Action dated 10/14/2005.

4. Claims 1-4, 7, 8, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Linert et al. (US 2003/139521 A1) as substantially set forth in the Office Action dated 10/14/2005.

***Double Patenting***

5. Claims 1-8, 10 and 11 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 7, 24-25, 39-34; 1-70; 1-21 of copending Application Nos. 10/659,900; 10/785,218; 10/780,976. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the applications are directed to fluorochemically-treated fabrics.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Response to Arguments***

6. Applicant's arguments filed 12/19/2005 have been fully considered but they are not persuasive.

7. Applicant argues that Bullock et al. does not disclose a hydrophobic crosslinking component. This argument has been addressed supra (3e).

8. Applicant argues that when the two coatings disclosed by Bullock et al. are taken together results in comprise a nine weight percent of the treating composition applied to the fabric. The disclosure of Bullock et al. clearly states that the two treatments are separate and have different compositions. The secondary treatment comprises a composition of 4 weight percent as instantly recited in claim 1. Applicant's claim 1 does not preclude the use of other coatings in association with that which is claimed. Furthermore two coatings, each of equal overall weight, one at four weight percent and one at five weight percent, results in a composition of 4.5 weight percent  $(4+5)/2=4.5$ , not 9 weight percent as asserted by Applicant.

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9. Applicant argues that Examiner has failed to establish *prima facie* obviousness in the view of the rejection of claims 1-4 and 7, 8, 10 and 11 as obvious over Linert et al. (US 2003/139521 A1). For example, Applicant asserts that Linert et al. fails to teach a fluorochemical-containing soil release component, the specific release component of instant claim 2, or the antimicrobial agents in claims 5 and 6. Linert et al. teach a fluorochemical composition to render fabric oil and/or water repellant, comprising not more than 4% fluoropolymer such as fluorinated ester, blocked isocyanates, fungicidal agents (Abstract, [0071-73]). As such the applied reference teaches the instantly claimed composition of claims 1 and 2 it may be used as a soil-release component. Examiner agrees with Applicant that Linert et al. does not teach the limitations of claims 5 and 6, and has not applied Linert et al. to reject claims 5 and 6 in this Office Action or the action dated 10/14/2005.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Matzek whose telephone number is (571) 272-2423. The examiner can normally be reached on 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mdm



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